

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GLOBAL COMMODITIES, INC.,

Plaintiff,

-against-

Case No. 2:18-cv-00498

ALI BABA ENTERPRISES OF NY, INC. AND
SAYED HASSIB AZAM,

Defendants.

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MOTION FOR LEAVE TO WITHDRAW AS COUNSEL AND MOTION TO STAY

Ryder, Lu, Mazzeo & Konieczny, LLC ("RLMK") and Frank A. Mazzeo, Esquire ("Attorney Mazzeo"), attorneys of record for Defendants Ali Baba Enterprises of NY, Inc. and Sayed Hassib Azam ("Defendants"), file this motion for leave to withdraw their appearance as attorneys for Defendants. RLMK and Attorney Mazzeo request withdrawal attorneys of record due to Defendants' failure to cooperate and communicate with Attorney Mazzeo and RLMK. Additionally, continuing to represent Panther would cause an unreasonable financial burden on RLMK as Defendants are not meeting their financial obligations to RLMK.

RLMK and Attorney Mazzeo also hereby request a thirty-day stay of this case to permit Defendants to obtain new counsel, including a continuance of the Rule 16 initial conference currently scheduled for May 23, 2018. By filing this motion, counsel do not intend to waive any attorney-client privilege.

Respectfully Submitted:

RYDER, LU, MAZZEO & KONIECZNY LLC

Dated: May 10, 2018

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**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL AND
MOTION TO STAY**

In support of their Motion for Leave to Withdraw as Counsel, RLMK and Attorney Mazzeo hereby submit this Memorandum of Law.

I. HISTORY OF THE CASE

On January 24, 2018, Global Commodities, Inc. filed a complaint to bring this action against defendants Ali Baba Enterprises of NY, Inc. and Sayed Hassib Azam, alleging trade dress infringement. Defendants were served with the initial complaint on February 14, 2018. RLMK and Attorney Mazzeo were subsequently retained by Defendants to represent them in this matter on March 27, 2018, on which date Defendants filed a motion for an extension of time to file an answer to the initial complaint. On March 29, 2018, the Court held a telephone conference with parties' counsel to discuss the motion, after which the Court ordered Plaintiff to file an amended complaint and the parties to set the timing of the filing of the amended complaint and Defendants' answer to the same by joint stipulation. On March 30, 2018, the parties filed a joint stipulation setting the deadline for Plaintiff to file an amended complaint to April 3, 2018, and for Defendants to file an answer to the amended complaint within twenty days

of the amended complaint's filing. Plaintiff filed its amended complaint on April 4, 2018, and Defendants filed their answer with affirmative defenses to the same on April 23, 2018.

Since then, RLMK has communicated, on direction from Defendants, with Plaintiff's counsel regarding possible terms for coexistence and/or amicable settlement of this matter. However, Defendants have ceased responding to, communicating with, and otherwise cooperating with RLMK, and have failed to satisfy their financial obligations to RLMK in order to continue representing them in this case. An initial conference is currently scheduled before this Court on May 23, 2018.

II. CLIENTS' ACTIONS SUPPORT WITHDRAWAL UNDER NEW YORK RULE OF PROFESSIONAL CONDUCT 1.16(c)

In relevant part, the New York Rule of Professional Conduct 1.16 provides that withdrawal from representing a client is permissible when:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- ...
- (5) the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees;
- ...
- (7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively; or
- ...
- (12) the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

New York Rules of Prof'l Conduct 1.16 (2017).

Here, RLMK's and Attorney Mazzeo's withdrawal is warranted under Rule 1.16(c)(1) because it can be accomplished without material adverse effect on the interests of the client. RLMK is hereby requesting a thirty-day stay of this proceeding so as to allow Defendants to

obtain new counsel, who will then have adequate time to familiarize themselves with the proceeding to competently represent Defendants. Furthermore, there remain thirteen days until the scheduled initial conference with the Court, and no other deadlines are currently looming. As such, and with a thirty-day stay, Defendants will have ample time to locate and retain new counsel, and new counsel will have sufficient time to review the materials and facts to adequately represent Defendants.

Additionally, RLMK's and Attorney Mazzeo's withdrawal is warranted under Rule 1.16(c)(5). Defendants' obligations under its representation agreement with RLMK include the prompt and full payment of retainer for legal representation to RLMK. As of the date of this motion, Defendants have continually failed to provide RLMK sufficient retainer funds, and have done so for over a month. Defendants' demonstrated inability to fulfill its financial obligations to RLMK under its representation agreement and to allow RLMK to continue representing Defendants in this matter will result in an unreasonable financial burden for RLMK if it were compelled to continue representing Defendants. RLMK has informed Defendants of their failure to fulfill the obligation that they agreed to in the representation agreement, and has given notice to Defendants that RLMK will move to withdraw if additional retainer is not provided.

RLMK's and Attorney Mazzeo's withdrawal is also warranted under Rule 1.16(c)(7). Defendants have continually failed to cooperate with RLMK in their representation of Defendants and have made the representation unreasonably difficult to carry out effectively by failing to communicate with RLMK regarding the progress and status of the case. After directing RLMK to confer with Plaintiff's counsel regarding possible terms for coexistence and/or amicable resolution of the matter, Defendants have continually neglected to give RLMK

further instruction or to communicate with RLMK at all regarding the same. Accordingly, RLMK cannot effectively and competently represent Defendants or their interests.

Attorney Mazzeo has fulfilled all necessary duties set forth in New York Rule 1.16(e). Pursuant to his duty under New York Rule 1.16(e) to "take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client," Attorney Mazzeo forwarded to Defendants relevant court filings and orders, has advised Defendants of their deadlines, relayed communications between Attorney Mazzeo and opposing counsel to Defendants, gave reasonable notice to Defendants of his filing this motion to withdraw, and hereby requested a thirty-day stay of the proceeding to allow time for Defendants to employ other counsel.

III. RLMK'S AND ATTORNEY MAZZEO'S MOTION TO STAY WILL NOT PREJUDICE THE PARTIES AND WILL ALLOW PLAINTIFF TIME TO SEEK NEW COUNSEL

By this motion, RLMK and Attorney Mazzeo also request a thirty-day stay of this proceeding to allow Defendants to obtain new counsel. A thirty-day stay of this case will not prejudice either party. All initial pleadings, including the amended complaint and answer to the same, have been filed before this Court, so there is no deadline currently that would need adjusting other than the May 23, 2018 initial conference. Thus, Defendants could use the time to find new counsel, and such new counsel would have ample time to familiarize themselves with the facts of the case.

IV. CONCLUSION

Based upon the New York Rules of Professional Conduct, RLMK and Attorney Mazzeo are warranted in withdrawing as representative counsel for Defendants. Additionally, a thirty-day stay of this case will not prejudice either party, and it will give Defendants sufficient

opportunity to obtain new counsel. RLMK and Attorney Mazzeo respectfully request hereby that the foregoing petition to withdraw as counsel and for a stay be granted.

Respectfully Submitted:

RYDER, LU, MAZZEO & KONIECZNY LLC

Dated: May 10, 2018

By: /FrankAMazzeo/
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Counsel for Defendants

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PROPOSED ORDER

AND NOW, this ____ day of _____, 2018, upon consideration of
Ryder, Lu, Mazzeo & Konieczny LLC's and Frank A. Mazzeo's Motion For Leave To Withdraw
As Counsel and Motion to Request a Stay for the defendants, and accompanying brief in support
thereof, it is hereby ORDERED and DECREED that said Motion is GRANTED.

BY THE COURT

Honorable Sandra J. Feuerstein, District Judge

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that a true and correct copy of the foregoing document was served this date via ECF and email upon the following:

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and email upon the following:

Sayed Hassib Azam
Ali Baba Enterprises of NY, Inc.
146-49 25th Drive
Flushing, NY 11355

Dated: May 10, 2018

By: /DenisYanishevskiy/
Denis Yanishevskiy